

## STATE OF TENNESSEE

### DEPARTMENT OF ENVIRONMENT AND CONSERVATION

#### BROWNFIELD VOLUNTARY AGREEMENT

**RE:** [SITE NAME]

**SITE NUMBER:**

#### INTRODUCTION

This Brownfield Voluntary Agreement (hereinafter "AGREEMENT") is made and entered into as of \_\_\_\_\_, 200\_, by and between[among] the Tennessee Department of Environment and Conservation (hereinafter "Department"), and \_\_\_\_\_, a \_\_\_\_\_ **[e.g., organized under and existing pursuant to the laws of the State of Tennessee]** (hereinafter [collectively] "Voluntary Party") for the purpose of addressing **[an approximately \_\_\_\_\_ acre portion of]** the above-referenced site (hereinafter "Site"), which has the real or perceived threat of the presence on the Site of hazardous substances, solid waste, or any other pollutant.

James H. Fyke is the duly appointed Commissioner of the Department. Jim Haynes, Director of the Department's Remediation Division, has been delegated the authority to enter into these Agreements.

Pursuant to Tennessee Code Annotated § 68-212-224, the Commissioner is authorized to enter into an Agreement with a party who is willing and able to conduct an investigation and remediation of a hazardous substance site or Brownfields Project and who did not generate, transport or release the contamination that is to be addressed at the Site.

#### REQUIREMENTS

##### A. SITE LOCATION

The Site is located at:

**[Street address or legal description- attach as exhibit]**

##### B. ELIGIBILITY

As required by T.C.A. § 68-212-224, a summary description of all known existing environmental investigations, studies, reports or documents concerning the Site's environmental condition has been submitted to the Department by the Voluntary Party. On the date of entering into this AGREEMENT, the Department has determined that the Site is not listed or been proposed for listing on the federal National Priorities List by the United States Environmental Protection Agency (EPA). By entering into this AGREEMENT, the Voluntary Party certifies to

the best of the Voluntary Party's knowledge that the Voluntary Party did not generate, transport or release contamination that is to be addressed at this site.

#### C. FINANCIAL REQUIREMENTS

The Voluntary Party agrees to pay all Oversight Costs associated with the Department's oversight of and assistance in the implementation of this AGREEMENT. Assistance includes, but is not limited to, the Commissioner's exercise of his authority under T.C.A. § 68-212-206(a). Oversight Costs shall include any out-of-pocket expense, mileage, lab expense, the current hourly rate and pro rata portion benefits for the Department's employees actively employed in oversight of work under this AGREEMENT, including preparation for and attendance at meetings, the current State overhead rate, and costs billed by State contractor(s) who are actively performing oversight. The Department shall provide the Voluntary Party with quarterly statements reflecting oversight costs posted during the previous quarter.

Tennessee Code Annotated § 68-212-224 requires consideration of a fee to enroll in the Voluntary Cleanup Oversight and Assistance Program. Since the Voluntary Party did not generate, transport or release contamination that is to be addressed at the site and will be serving the public welfare by redeveloping a property that is abandoned or underutilized, the participation fee is hereby waived.

#### D. IDENTIFICATION AND DOCUMENTATION OF CLEANUP

Based on the information submitted to the Department by or behalf of the Voluntary Party, and the Department's own review and investigation of the Site, the Parties hereto agree that the following environmental conditions are to be addressed under this Agreement:

#### E. AGREED LIABILITY RELIEF

Real or perceived hazardous substances, solid wastes or other pollutants are determined to be present on this site to an extent that may or may not have yet been fully characterized. As the current owner or operator, or upon becoming an owner or operator of the Site, the Voluntary Party may occupy the status of a "liable party" pursuant to the definition of that term contained in T.C.A. § 68-212-202(4). Liability may be apportioned pursuant to factors in T.C.A. § 68-212-207 as well as other equitable factors. The Commissioner is authorized to determine an apportionment of liability within this Agreement as authorized by T.C.A. § 68-212-224.

The Commissioner agrees that the Voluntary Party's implementation of the actions agreed upon in Section H will constitute satisfaction of the apportioned liability of the Voluntary Party under all environmental statutes administered by the Department for the contamination identified in Section D of this AGREEMENT. The Voluntary Party, however, remains potentially responsible for any release of hazardous substances or other pollutants that occurs at the Site while it owns or operates the Site.

Other than the obligations set forth in this AGREEMENT, the Voluntary Party shall bear no liability under any statute administered by the Department, for investigation, remediation, monitoring and/or maintenance of the environmental conditions identified and addressed in this AGREEMENT, (1) during the implementation of the response activities required hereunder, as long as the Voluntary Party is and remains in compliance with the terms and condition of this AGREEMENT, and/or (2) following the completion of such response activities required under this AGREEMENT; provided, however, that to the extent that the Voluntary Party has or maintains an interest in the Site, or possesses and/or controls all or a portion of the Site, its liability protections hereunder are contingent upon the continued adherence and enforcement of any land use restrictions imposed pursuant to or as a result of this AGREEMENT. Notwithstanding the foregoing, nothing in this AGREEMENT shall limit the liability of the Voluntary Party for contamination occurring after the date of the AGREEMENT. This liability protection is extended to successors in interest or in title, contractors conducting response actions at the Site, developers, future owners, tenants, and lenders, fiduciaries or insurers, conditioned upon performance of the obligations contained in this Agreement and compliance with any land use restrictions required thereby; and, this liability protection does not apply to liability that arose prior to this AGREEMENT.

#### F. THIRD PARTY LIABILITY RELIEF

The Voluntary Party shall not be liable to third parties for contribution regarding matters addressed in this AGREEMENT; provided that, the Voluntary Party gave the third party actual or constructive notice of this AGREEMENT, and the third party was given an actual or constructive opportunity to comment upon this AGREEMENT. The Voluntary Party has demonstrated to the Department that constructive notice was accomplished by publishing a summary of this AGREEMENT in the \_\_\_\_\_ [ **newspaper of general circulation within the geographical area of the Site**] at least thirty (30) days prior to the Effective Date of this AGREEMENT. Nothing in this Agreement shall impair the rights of third parties with respect to tort liability claims for damage to person or property arising from the contamination addressed by the voluntary agreement.

#### G. LAND USE RESTRICTIONS

Upon acquiring the Site, the Voluntary Party agrees that said property will be restricted as follows:

##### **[e.g., to industrial uses and services only]**

The Voluntary Party agrees that it will file any land use restriction identified by the Department as necessary for the safe use of the property in accordance with T.C.A. 68-212-225.

#### H. AGREED ACTIONS TO BE TAKEN

1. The Voluntary Party agrees to send notification of this AGREEMENT by certified mail to all local governments having jurisdiction over any part of the subject property and to all owners of adjoining properties. The Voluntary Party shall provide adequate documentation to demonstrate that public notice has been accomplished.

2. The Voluntary Party agrees to\_\_\_\_\_
3. Upon completion of all tasks set forth in this AGREEMENT, the Department shall issue to the Voluntary Party a letter stating the requirements of this AGREEMENT have been fulfilled and no further action is required of the Voluntary Party concerning contamination identified and addressed in this AGREEMENT. Upon the request of the Voluntary Party from time to time, the Department shall issue an interim status letter identifying what specific obligations remain to achieve completion of the work under this AGREEMENT. Issuance of a no further action letter shall not relieve the Voluntary Party of any responsibilities for operation and maintenance activities or continued adherence to and enforcement of land use restrictions, if any, pursuant to T.C.A. § 68-212-225. The Department reserves the right to require additional action for contamination caused by the Voluntary Party occurring after the date of this AGREEMENT or for contamination not identified and addressed under this AGREEMENT, if any. Each Voluntary Party or successor in title to the Site shall be responsible for compliance with the requirements of this AGREEMENT during the period in which such person owns an interest in the Site, or possesses and/or controls all or a portion of the Site.

#### I. ADDITIONAL REQUIREMENTS

1. The Voluntary Party may request a time extension for any deadline included in this AGREEMENT prior to the deadline. The time extension may be granted through mutual consent for good cause shown.
2. The Voluntary Party agrees not to disturb, move or remove any areas of hazardous substances, solid waste or other pollutant(s) that are subject to liability protection under this AGREEMENT without written approval by the Department unless the activities are being conducted under the terms and conditions of this AGREEMENT or necessitated by the normal day-to-day activities of any on-going business.

#### J. SITE ACCESS

During the effective period of this AGREEMENT, and until certification by the Department of completion of all activities under this AGREEMENT, the Department and its representatives or designees shall have access during normal business hours to the Site. Nothing herein shall limit or otherwise affect the Department's right of entry, pursuant to any applicable statute, regulation or permit. The Department and its representative shall comply with all reasonable health and safety plans published by the Voluntary Party or its contractor and used by Site personnel for the purpose of protecting life and property.

#### K. SUBMISSION OF INFORMATION, REPORTS, OR STUDIES

The Voluntary Party certifies under penalty of law, including but not limited to penalties for perjury, that the information contained in all submissions is true, accurate and complete to the best of their knowledge, information and belief. The Voluntary Party is aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for intentional violation.

#### L. RESERVATION OF RIGHTS

1. This AGREEMENT shall not be construed as waiving any right or authority available to the Commissioner to assess responsible parties other than the Voluntary Party for liability for civil penalties or damages incurred by the State, including any natural resource damage claims which the Department or the State of Tennessee may have under Section 107 of CERCLA or any other statute, rule, regulation or common law.
2. Nothing in this AGREEMENT shall be interpreted as limiting the Voluntary Party's right to preserve the confidentiality of attorney work product or client-attorney communication. T.C.A. § 68-212-202 et seq. contains no provisions for confidentiality or proprietary information. Therefore, records, reports, test results, or other information submitted to the Department under this AGREEMENT shall be subject to public review. Any and all records, reports, test results or other information relating to a hazardous substance site or the possible hazardous substance at the Site submitted under this AGREEMENT may be used by the Department for all purposes set forth in T.C.A. § 68-212-201 et seq.
3. Voluntary Party may terminate this AGREEMENT at any time upon written notice to the Department. Upon such termination, the Voluntary Party shall have no further obligations hereunder other than payment of oversight costs accrued to the date of notice of termination; provided, that both Parties shall have and retain all authority, rights and defenses as if this AGREEMENT had never existed.
4. The Department may terminate this AGREEMENT by written notice to the Voluntary Party in the event that the Department receives timely comments from third-party contribution claim holders pursuant to the notice sent under Section F of this AGREEMENT, if any, and such comments disclose facts or considerations that indicate that this AGREEMENT is inappropriate, improper or inadequate; provided, however, absent fraud or intentional misconduct, that in such event the Voluntary Party may elect to waive the protections set forth in Section F hereunder and the remainder of the terms and conditions of this AGREEMENT shall continue to be in full force and effect. The Department's notice of termination must be made within thirty (30) days of the end of the 30-day notice period required by Section F. The Voluntary Party's waiver notice must be made within fifteen (15) days after receipt of the Department's termination notice.
5. Nothing in this AGREEMENT shall be interpreted as limiting the liability for the proper management and/or disposal of contaminated material removed from the site.

The individual(s) signing below on behalf of the Voluntary Party [**represent that they have the authority or are**] [represents that he is a] duly authorized agent(s), capable of entering into a binding AGREEMENT on behalf of the Voluntary Party. By entering into this AGREEMENT, [**these individuals certify** ][this individual certifies] that the Voluntary Party did not generate or did not cause to generate, transport or release contamination that is to be addressed at this site.

The Effective Date of this Agreement is the thirtieth (30th) day after the publication of the notice described in Section F of this Agreement.

_____	_____	_____	_____
Date	James W. Haynes, P.E.	Date	Voluntary Party:
	Director		_____
	Division of Remediation		_____